

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2004

CORAM

THE HONOURABLE MR. JUSTICE N.KANNADASAN

WRIT PETITION No.10186 of 1997

B.Jeevanandam .. Petitioner

-Vs-

1.The District Collector,
Dindigul District at Dindigul.

2.The District Collector,
Madurai District at Madurai.

3.The Revenue Divisional Officer,
Madurai.

4.The Divisional Manager,
Canara Bank (Circle Office),
Staff Section (Workmen),
St. Mary's Campus, East Veli St.,
Madurai 625 001. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the orders of the first respondent passed in his proceedings No.Na.Ka.18451/94/H1 dated 27.8.1996 and 25 .6.199 7 and quash the same and direct the first respondent to send report to the Canara Bank, Circle Office, Madurai, the fourth respondent herein based on the report of the third respondent dated 7.6.1996.

!For Petitioner : Mr.R.Ramesh

^For Respondents-1to3: Mrs.N.G.Kalaiselvi,
Special Govt. Pleader.

For Respondent-4 : Mr.C.Godwin

:ORDER

The petitioner who claims to belong to Hindu Sholaga Community which is included in the list of the Constitution (Scheduled Tribe) Order 1950

has filed the above writ petition challenging the proceedings dated 27.8.1996 and 25.6.1997 of the first respondent and for consequential relief. The petitioner contended that he has completed his SSLC as well as Plus-two at Madurai and his SSLC certificate as well as transfer certificate disclose that he belongs to Hindu Sholaga Community. The petitioner has obtained community certificate dated 3.1.1986 from Tahsildar, Nattam Taluk which originally formed part of Madurai District and later on included in Dindigul District after bifurcation. According to the petitioner the said certificate was issued to him after due enquiry and verification of entire records. It is further contended that the petitioner was selected as Clerk in the fourth respondent-bank during 1985 and the above community certificate was produced at the time of his appointment in the fourth respondentbank during January 1986 and after verifying the community certificate as well as other connected records, he was allowed to join duty as a Clerk after completion of his training period. However, nearly after completion of several years of service, the fourth respondent-bank has chosen to verify the community status of the petitioner and issued a communication dated 11.4.1994 directing the petitioner to appear for enquiry in the Office of the Tahsildar, Dindigul. Even though the said direction is issued by the fourth respondent-bank to appear for enquiry, in the very said communication, the fourth respondent has indicated that the petitioner would not be eligible for leave on duty and also not eligible for travelling and other allowances. As directed by the fourth respondent, he has appeared for an enquiry before the Tahsildar. Later on, the Revenue Divisional Officer, Dindigul has directed him to appear for enquiry on 25.9.1995. Accordingly, the petitioner has appeared on the said date and once again produced all the documents available in his custody and also participated in the enquiry. After completion of the said enquiry, the Revenue Divisional Officer through his letter dated 8.1.1996 informed the District Collector, Dindigul viz., the first respondent to the effect that an enquiry has to be conducted at Madurai by referring to the fact that the petitioner was born at Madurai. The above decision was taken by the Revenue Divisional Officer, Dindigul on the basis of production of the birth certificate by the petitioner in the course of enquiry before him. Accordingly, the first respondent in his letter dated 3.4.1996 has requested the second respondent viz., the District Collector, Madurai to conduct an enquiry who in turn has delegated his powers upon the third respondent, viz., the Revenue Divisional Officer, Madurai to conduct an enquiry and to submit his report. The third respondent has conducted an enquiry on 10.5.1996 and in the course of enquiry, the petitioner, petitioner's father and his close relative A.Marudiah and other residents have appeared and gave statement in support of the claim of the petitioner. The third respondent has also independently conducted another enquiry through Madurai South Zonal Deputy Tahsildar on 23.5.1996 and in the said enquiry the petitioner and his relative have participated. After the said enquiry, a final conclusion was arrived at by the third respondent in his report dated 7.6.1996 holding that the petitioner belonged to Hindu Sholaga community and the said report was forwarded to the second respondent. The second respondent has accepted the said report of the third respondent inasmuch as the communication was sent by him in his proceedings in Na.Ka.No.56153 dated 28.6.1996 wherein the final report submitted by the third respondent was forwarded. The first respondent has also forwarded another report of the Revenue Divisional Officer, Madurai

dated 30.5.1996 wherein the details with reference to the ancestors of the petitioner have been set out and the relationship of the petitioner with one A. Marudiah has been traced and further details of migration of the petitioner's ancestors from Tirunelveli District to Madurai District have been disclosed. In view of the fact that the third respondent has finally concluded about the community status of the petitioner with reference to his ancestors and other documents produced viz., the school registers and a sale deed dated 21.5.1963 pertaining to the above mentioned A. Marudiah, which came into existence even prior to the birth of the petitioner, the first respondent instead of communicating the favourable report pertaining to the community status of the petitioner, has chosen to send the impugned communications dated 27.8.1996 and 25.6.1997 resulting in the petitioner to approach this Court. The communication dated 27.8.1996 is addressed to the District Collector, Tirunelveli District, directing him to submit a further report relating to the ancestors of the petitioner and the communication dated 25.6.1997 is a notice issued on behalf of the respondent calling upon the petitioner to appear for enquiry once again in the office of the first respondent. In view of the repeated enquiries and the attitude of the first respondent who is unnecessarily prolonging the issue in spite of the receipt of a favourable finding from a high ranking Officer viz., the Revenue Divisional Officer, Madurai which is acted upon by the second respondent viz., the District Collector, Madurai, the petitioner has filed the above writ petition for the relief stated therein.

2. The fourth respondent has filed a counter-affidavit contending that there is nothing wrong on the part of the fourth respondent to verify the community certificate produced by the petitioner and also contended that in view of the direction of the Central Government dated 5.11.1992, the present enquiry is ordered in respect of the petitioner.

3. The learned Special Government Pleader appearing for the respondents 1 to 3 has contended that there is nothing wrong on the part of the respondents to conduct enquiry through various Officers until they are satisfied about the claim made by the petitioner.

4. I have considered the rival claims of the parties.

5. Before adverting to the manner in which the enquiry was conducted by the respondents 1 to 3 it would be useful to examine the circumstances under which the present enquiry is initiated at the instance of the fourth respondent. The fourth respondent in para-4 of the counter-affidavit has stated as follows:-

"The Government of India has issued guidelines for appointment of SC/ST candidates to post in Government of India Undertakings. The guidelines issued by the Government provide that the Community Certificate in the prescribed format shall be issued by one of the five Authorities noted below:-

(1) District Magistrate/Additional District Magistrate/Collector/....

..

...

(2) Chief Presidency Magistrate/Additional Chief Presidency

Magistrate/Presidency Magistrate.

(3) Revenue Officer not below the rank of Tahsildar.

(4) Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

(5) Administrator/Secretary to Administrator/Development Officer (Lakshdweep Islands)"

On a reference to the above, it is clearly admitted that one of the competent authority to issue the community certificate is the Revenue Officer not below the rank of Tahsildar. The fourth respondent has further admitted that the petitioner has produced a community certificate dated 3.1.1986 issued by the Tahsildar Nattam Taluk. The counter-affidavit further proceeds to the effect that the present enquiry is initiated by the fourth respondent on the basis of the communication of the Central Government in its letter No.101/34/92SCT (B) dated 5 .11.1992 wherein it is mentioned that the community certificate in respect of scheduled tribe candidates from Tamilnadu who have joined in the services on and after 11.11.1989 are required to submit their certificates duly signed by the Revenue Divisional Officer and those who have joined prior to 11.11.1989, the certificates produced by them should be verified through the concerned District Collectors. The counter also proceeds further that the present enquiry was required only on the basis of the abovesaid communication. A further reference is also made in the counter-affidavit that as per the brochure on ' Reservation for Scheduled Caste and Scheduled Tribes Services', the employer is entitled to verify if it considers necessary at any time after appointment.

6. In the light of the above pleadings, it is seen that the competent authority to issue the community certificate is the Tahsildar at the relevant point of time. Inasmuch as the petitioner has produced a community certificate obtained from a competent authority and it is nobody's case that the said certificate was not issued by the said authority, it is not known as to what prompted the fourth respondent to suddenly conduct an enquiry nearly after several years of appointment viz., after a decade. Assuming that the fourth respondent is constrained to conduct an enquiry on the basis of a communication issued by the Central Government dated 5.11.1992, it appears that the fourth respondent has not appreciated the purpose for which the above communication was sent by the Central Government. It is an admitted fact that as far as the Tamilnadu is concerned, the State Government has passed a Government Order in G.O.Ms.No.2137 dated 11.11.1989 wherein the list of authorities empowered to issue community certificate in respect of scheduled tribes are concerned was designated as the Revenue Divisional Officer on and from 11.11.1989. Inasmuch as the new authority is authorised to issue the community certificate from a particular date viz., 11.11.1989, it is quite natural for the Government of India to issue a direction as stated above to require the individuals from Tamilnadu to obtain community certificates only from the Revenue Divisional Officers. Under the said circumstances, any further direction to the effect that all the individuals who have already joined service or got the community certificates prior to 11.11.1989 from the list of authorities originally empowered to issue the community certificates should not be required to obtain another community certificate as a matter of

course. In fact, when the interpretation of the said order of the State Government came into question, the Apex Court in its judgment in R.Kandasamy vs. The Chief Engineer, Madras Port Trust (JT 1997 (7) SC 660) has held that all the community certificates issued prior to 11.11.1989 by the Tahsildars have to be treated as valid one. The Apex Court while rendering the above decision has directed that the petitioner who has to be promoted to the higher post is not required to produce another community certificate as long as the earlier community certificate issued by the Tahsildar is not cancelled. Even the brochure on "Reservation for Scheduled Caste and Scheduled Tribes in services" proceeds to the effect that the employers can conduct enquiry only if it is necessary and nowhere it is indicated that in the absence of any materials or circumstances warranting the authorities, such enquiry can be conducted in a casual manner at the whims and fancies of the employers. The entire counter-affidavit does not disclose about the existence of any other reasons except the communication of the Government of India which is general in nature. In the light of the judgment of the Apex Court, the communication of Government of India dated 5.11.1992 has no relevance and the same need not be acted upon. His Lordship P. SATHASIVAM, J., in the judgment in R.Gurusamy vs. District Collector, Coimbatore District, Coimbatore and Others (1999 (3) MLJ 88) has considered the question of verification of a community certificate of an individual and held therein that merely on the basis of complaints received from third parties, the verification process should not be initiated as the same would amount to harassment. In the absence of any other reasons available for the fourth respondent to cause verification of the community status of the petitioner, I am convinced that the present enquiry is initiated in a mechanical manner and such enquiries would amount to harassment to the employees concerned.

7. In fact, the Supreme Court in its decision rendered in Madhuri Patil vs. Additional Commissioner, Tribal Development (AIR 1995 SC 94) at para 8, has emphasised that the State is enjoined under the Constitution to provide facilities and opportunities for development of the Scheduled Tribes scientific temper, educational advancement and economic improvement, so that they may achieve excellence, equality of status and live in dignity. Further emphasis is also made that reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. The Apex Court further emphasised that under the said circumstances, the Union of India and State Government have prescribed the procedure and has entrusted the duty and responsibility to the Revenue Officers who are gazetted cadre to issue social status certificate after due verification. In the light of the above observation of the Apex Court and admittedly when the petitioner has produced a community certificate from the Tahsildar as early as in the year 1996, who is a gazetted Officer, the action of the fourth respondent in suspecting the genuineness of the said certificate without the existence of any materials is not justified.

8. As regards the procedure adopted by the first respondent in finding out the genuineness of the claim of the petitioner is concerned, it is seen that the petitioner is subjected to untold misery and hardship. The enquiry was initially conducted by the office of the Tahsildar, Dindigul

during 1994 and thereafter by the Revenue Divisional Officer, Dindigul on 25.9.1995 and subsequently, a report was submitted on 8.1.1996 by him to the first respondent. The first respondent in turn has called upon the second respondent to conduct an enquiry once again on the ground that the petitioner was born at Madurai. It is pertinent to note that the petitioner has not suppressed at any point of time about his place of birth as Madurai in the enquiry conducted by the Revenue Divisional Officer, Dindigul. As per the directions of the first respondent, the second respondent has directed the Revenue Divisional Officer, Madurai viz., the third respondent to conduct a detailed enquiry. Accordingly, a further enquiry was held in the office of the third respondent on 10.5.1996 on which date, the petitioner, his father and his relatives and his close relative one A. Marudiah and other residents appeared and gave statement apart from the production of documentary evidences, including the registered document of the year 1963 which came into existence prior to the birth of the petitioner. Apart from the said enquiry, a discreet enquiry was conducted independently by the third respondent on 23.5.1996 through Madurai South Zonal Deputy Tahsildar. After completion of all such formalities, the third respondent has forwarded a detailed report on 30.5.1996 with regard to the migration of the petitioner's ancestors from Tirunelveli District and the relationship between the petitioner with one A. Marudiah was traced. Finally another report was submitted on 8.6.1996 by the third respondent holding that the petitioner belongs to the Sholaga community, which is included in the list of scheduled tribes. The second respondent on receipt of the above mentioned two reports from the third respondent has informed the first respondent that as per the report of the third respondent, the petitioner belongs to Hindu Sholaga community. Even though the second respondent has sent a communication dated 28.6.1996, by merely requesting the first respondent to take a final decision, in effect the enquiry was concluded and the report of the third respondent was acted upon wherein it is held that the petitioner as belonging to the Scheduled Tribe Community. The enquiry was delegated to the second respondent on the ground that the petitioner was born at Madurai and he has obtained a community certificate from the Tahsildar, Nattam Taluk which originally form part of Madurai District and as such, the findings of the Revenue Authorities of the Madurai District have to be treated as final and binding upon the other authorities. In fact, the second respondent has not rejected the report of the Revenue Divisional Officer and he has only forwarded the said reports which would mean that he has also affirmed the decision of the third respondent.

9. Even though a favourable finding was arrived at by the third respondent, as communicated by the second respondent, the first respondent has again took the view that the matter should not be given a quietus and chosen to send the impugned communication dated 27.8.1996 addressed to the District Collector, Tirunelveli to conduct an enquiry in respect of the petitioner's relative A. Marudiah as well as the community certificate issued to the said A. Marudiah and to forward a report and also chosen to send another communication dated 27.5.1996 calling upon the petitioner to appear for another enquiry. Inasmuch as an elaborate enquiry was conducted initially by the Tahsildar and the Revenue Divisional Officer, Dindigul and thereafter the two enquiries by the third respondent, viz., the

Revenue Divisional Officer, Madurai and the decision of the second respondent in forwarding the final report of the third respondent, it is not known as to why the first respondent has again entertained a further doubt with regard to the genuineness of the claim of the petitioner.

10. It is seen from the averments made by the petitioner in the affidavit filed in support of the writ petition, the Government of India, Social Welfare Department in memo No.34796/HW/III/76 dated 16.8.1975 on the basis of the report of the then District Collector, Tirunelveli has recommended the petitioner's relative A.Marudiah to be nominated as a member of the District Harijan Welfare Committee. At the relevant point of time, the said A.Marudiah was appointed as the President of the Tirunelveli District Sholaga Community. In pursuance of the said notification, the Government of India has also nominated the said A.Marudiah on 16.8.1975 as the member of the said committee. The above said A.Marudiah is none-else than the brother of the petitioner's maternal grandfather.

His Lordship P. SATHASIVAM, J., in the judgment in N.Rajeswari vs. The District Collector, Nellai Kattabomman District, Tirunelveli and others (WP No.19793 of 1992 dated 24.9.1999) has considered the above mentioned facts while considering the claim of the petitioner therein, has rendered a finding that the petitioner belonged to Hindu Sholaga Community. In the said judgment, the learned Judge has made a reference about the community status of the above mentioned A. Marudiah, who is also related to the petitioner therein. Inasmuch as the third respondent has submitted a detailed report tracing the relationship between the petitioner herein with the abovesaid A.Marudiah and having submitted a favourable report to the effect that the petitioner is belonging to Hindu Sholaga Community, the further enquiry by the first respondent would tantamount to taking a contrary view of the decision of the learned Judge in the judgment referred supra. In fact, the impugned communication of the first respondent dated 25.6.1997 merely proceeds to the effect that an enquiry will be conducted again and the petitioner is directed to appear in the office of the first respondent. The other communication dated 27.8.1996 addressed by the first respondent to the District Collector, Tirunelveli District proceeds to the effect that an enquiry shall be conducted in respect of the abovesaid A.Marudiah, who has already been recognised by this Court as belonging to Hindu Sholaga Community in the decision referred supra. Under the said circumstances, there is no necessity for the first respondent to prolong the enquiry in the guise of collecting further details.

11. As regards the legal issues are concerned, it is needless to point out that once a favourable report is arrived at in respect of the community status of an individual is concerned, there shall not be a further enquiry which would be nothing but a harassment. In fact, the Apex Court in its judgment in Madhuri Patil vs. Additional Commissioner, Tribal Development (AIR 1995 SC 94) has held that once a favourable report is received to the effect that the claim of the individual is genuine, no further action need be taken unless such report is fraudulently obtained. Admittedly, in the case on hand, the impugned communication of the first respondent do not suggest that earlier report of the second respondent as well as the third respondent was fraudulently obtained. The Division Bench of this Court rendered a judgment in Sakthi Devi, S.P. vs. The Collector of Salem, Salem etc. (Vol.98

L.W.105) by their Lordships M.N.CHANDURKAR, CHIEF JUSTICE, and SATHIADEV, J., wherein it was held that once a favourable report is received from the Revenue Authorities to the effect that the community certificate is genuine thereafter the certificate holder cannot be further harassed to prove his community status. His Lordship S.S. SUBRAMANI, J., in the judgment in S.Natarajan vs. District Collector, Tuticorin and Others (AIR 1999 MADRAS 241) wherein held that once a member of the family was declared as belonging to the scheduled tribe community, the other members should not be denied for the issuance of the said certificate. Admittedly, in the case on hand, the petitioner's grandfather's brother by name A.Marudiah is held to be belonging to scheduled tribe community by decision rendered by this Court referred to supra, and he is also possessing a valid community certificate and as such the petitioner who is also a member of his family, should not be denied the same benefits. The Apex court in its judgment rendered in GAYATRILAXMI BAPURAO NAGPURE vs. STATE OF MAHARASHTRA (19 96 (3) SCC 685) has held that a wrongful denial of a caste certificate to the genuine candidate will deprive the privileges conferred upon the said individual by the Constitution and as such, it is emphasised that greater care must be taken before granting or rejecting any claim for caste certificate. The Apex Court while rendering the above judgment has taken note of the principles laid down in the Madhuri Patil's case and found that the rejection of the claim of the individual therein about her community status in spite of production of several documentary evidences was bad in law. Inasmuch as a favourable report is arrived at in respect of the petitioner's community status, he cannot be further harassed to prove his community status. The above proposition of law is emphasised in number of cases and they are:

1. B.Kumari vs. The District Collector, Tirunelveli Kattabomman District, Tirunelveli (WP 12083 of 1995 dated 9.6.2000)
2. R.Nirmala vs. The District Collector, Salem District, Salem and another (WP 11140 of 1997 dated 21.8.2002)
3. S.Nambiraj vs. The District Collector, Tirunelveli Kattabomman District, Tirunelveli and two others (WP 17665 of 1993 dated 2.7.2002)
4. The Sub Collector, Hosur, Dharmapuri District and two others vs. P.M.Muni Reddi (WA 1054 of 1986 dated 25.4.1989)
5. T.Padmanabhan and T.Karthikeyan vs. The District Collector, Tirunelveli and two others (WPs 12439 and 12440 of 1997 dated 17.3.19 99).

12. For the foregoing reasons, I am of the considered opinion that the impugned orders are liable to be set aside and the writ petitioner has to be treated as belonging to Hindu Sholaga Community which is included in the list of Scheduled Tribes. The writ petition is allowed, however, there will be no order as to costs.

Index : Yes.

Internet : Yes.

To

1.The District Collector,
Dindigul District at Dindigul.

2.The District Collector,
Madurai District at Madurai.

3.The Revenue Divisional Officer,
Madurai.

4.The Divisional Manager,
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